

# The Suitability of the (AIAC) as a Platform for the Settlement of Halal Product Disputes

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**Abstract:** Despite the halal industry importance and its vitality in the International business, it still lacks to real legal framework to absorb its singularity arisen by the novel marriage between religion and industry, which created unfamiliar Products carries commercial and religious features, to becomes exceed nor just the jurisdiction of the Courts, but it becomes jumped from legal scope into other scopes as a technical, trade and industry, added to its international nature, which created a real difficulty, especially, in term of its disputes settlement. Whereby examine the judicial system capability the study has shown that there are impediments represented in the area's versatility related to the products in term of the judicial expertise capacity and its International nature to exceed the national legal system, which led the researcher to move into alternative means. By overview on the alternative disputes institutions, he finds that, only (AIAC) has an independent rules combining between UNCITRAL rule of arbitration and relevant Islamic principles as a new product of arbitration named (I-Arbitration), which make it the proper Centre, especially Its place in the cradle of halal products (Malaysia) and surrounded by the industry's leading players in halal sector.

## 1 INTRODUCTION

Halal products are unique in nature; It combine commercial, religious and technical aspects, which exceed the familiar legal knowledge. We will examine shortly the components, manufacturers, and consumers of these products. We will also explore their overshoot of a single state and its legal system, and the judicial systems of non-Muslim countries, which will led the researcher to next step which is, the finding of the institution capable of absorbing the advanced aspects in a way that protects the rights of both the producers and the consumers.

Considering the present judicial system, its regional jurisdiction, and the limited mechanisms relied upon to deal with disputes of a technical nature (judicial experience), we find it unsuitable to settle the disputes of halal products, and this leads to a search for arbitration as an alternative system.

In the arbitration system, we focus on a body that is able to combine the commercial, technical aspects and Islamic principles, and, in this case, Asian International Arbitration Centre stands (AIAC) out as a rare arbitration Centre that owns a special regulation that is able to accommodate the commercial and religious aspects of halal products, especially in

Malaysia, which is the cradle of halal products, and has an advanced legislative environment in it. This paper uses an analytical approach in describing the specific nature of halal products in the first part, and then shows the strengths of AIAC that meet the specificities of halal products in the second part. The concluding part explores the extent of suitability of AIAC for settling the disputes of halal products.

In addition to the general sources in the halal and arbitration fields, the study has adopted the literature review, relying on both primary and secondary sources. However, studies on the settling of financial disputes and Islamic banking are few, and settling of halal product disputes is a field where research is still lacking. As far as this researcher can say, only a single study has shared the Malaysian judicial experience with Islamic banking on halal dispute (Ibtisam, 2012), but his suggestion has faced strong barriers, leading another researcher to consider arbitration as a suitable way to overcome those barriers (Maita, 2014). In the same vein, the researcher is trying to find an arbitration centre with deep experience in Islamic and commercial aspects, and AIAC has been found by another study comparing between the two biggest arbitration centres, Dubai and Kuala Lumpur, (Ai

kawamura, 2017) to close to realize the halal industry dispute nature.

## 2 HALAL CONCEPT AND NATURE

### 2.1 Halal Concept

From the review of existing literature, it can be summarized that the halal concept is wide, and it applies to all facets of life. The word halal appears in verses in the Qur'an and Sunnah, such as what Allah says in Al-Baq'arah (2:168):

﴿يَا أَيُّهَا النَّاسُ كُلُوا مِمَّا فِي الْأَرْضِ حَلَالًا طَيِّبًا﴾

O ye people! Eat of what is on earth Lawful and thoyyiban, which means permissible, good, pure, clean, wholesome, fit, etc. (Ibtisam, 2012). With the development of Muslims consumers' lives, the words, halal and thoyyiban, have been associated with a wide range of products and services, which create a special category of consumers with religious nature.

Although this concept is due to the emergence of Islam, it does not enter into the dealing and the scope of the rationing. For example, it featured in the recent past in the Malaysian Trade Descriptions law (Use of Expression of Halal) (Order: 1975), which was developed by the Malaysian Trade Descriptions law (Order: 2011), and followed by many countries that are interested in legislating halal concept.

### 2.2 Halal Products Nature, Religious and Commercial

This category of consumers represents the Muslim community around the world. The Muslims constitute a quarter of the world's total population, with a population of 1.6 billion (Poniman, Purchase, & Sneddon, 2015; Wan Omar, 2017), and that will increase to 26.4% of the world's inhabitants by 2030, according to estimates (Thomas, 2013). This has added commercial value to the religious nature of this kind of products and services. And the growing demand in these key markets for those products in the Muslim community, as a result of rising income levels, creates strong economy which leads some countries and companies, especially located in Southeast Asia and West Asia, (Report chapter 13 2010-2030), to contribute immensely to this sector to discover the opportunities of the sector.

The international nature of the halal product comes from two aspects. The first relates to the

product itself, and the other relates to consumers. The product involves the process of importing finished products and/or raw materials from different countries for marketing to Muslim and non-Muslim consumers in different countries of the world. With these two aspects, therefore, relationships emerge naturally between two or more parties belonging to two or more states, which indicate the international nature of such relations. Part of the offshoots of these relationships is, sometimes, the ensuing cross-border disputes, which lead the parties to jurisdiction disputes (George, 2017).

## 3 JUDICIAL EXPERIENCES AND CAPACITY

### 3.1 Judicial Mechanisms for Settling Disputes of Multi-disciplinary Cases

Judicial expertise primarily means a judge's ability to handle disputes of a technical nature by an investigative procedure assigned by the judge to the expert with experience in particular or technical aspects that are outside the scope of the judge's knowledge to express a scientific or technical opinion on a particular matter. The importance of this method is that it is considered a means of reserve for the judge at the beginning and end, as it remains subject to his choice, whether in terms of resorting to it, or in terms of which the term ends, whether in whole or in part to invocation, which sometimes leads to separation of the dispute on a non-scientific basis, which is directly reflected on the justice in the lawsuit.

Moreover, the task of the expert in judicial expertise is confined to a specific technical aspect in which the subject is an expert. However, the problems raised by halal disputes often include two scientific aspects to three aspects in each, and more issues, such as Islamic, technical and commercial, which means, there is a multiplicity of technical expertise in one dispute. This will prolong the dispute and burden the parties with expert fees, as well as the consequent conflict of experience reports in some cases that would affect the judge in building his faith in this the type of suits (Ahmed.s&Laeba, 2017).

### 3.2 Judicial Organization for Case by Islamic Aspects

Halal concept is multi-disciplinary; it contains several components, such as religious, scientific, technical,

economic and administrative components, but with the trade activity relating to this concept, the most considerable aspect of it is the religion, which reflects the weakness of its legal framework and settlement of the disputes related to it. Malaysia, which is at the forefront of the halal industry, has still not regulated the jurisdiction of halal cases in a way to suit commercial nature of halal products.

The Federal Constitution, as the highest law in the country, has clearly divided legislative powers of federal and state government. Matters relating to religion are stipulated under List II of Ninth Schedule, which specifies that the jurisdiction to enact laws relating to Islam falls within the purview of state jurisdiction. It is, therefore, questionable whether halal food will fall under federal or state jurisdiction considering that the said term is closely associated with Islam, and has its origin in Islamic Law. Hence, the appropriate courts to settle the dispute would be Shariah courts; this does not consider the commercial nature of halal products although there are some federal laws governing halal in products. For example, Trade Descriptions (Definition of Halal) (Order: 2011), which is federal act, defines halal and the punishment for violating this Order is also prescribed. At the same time, the offences contravening halal requirements are also punishable under various state of Shariah.

Malaysia has the experience to be raised in this aspect, regulating the jurisdiction of Islamic financial disputes. It has been agreed that the Islamic Banking falls within the purview of federal jurisdiction as it bears the commercial nature. Hence, the power to legislate laws is vested in the parliament as opposed to various state legislative assemblies. As the fundamental operation of the Islamic banking involves the banking process as a whole, the issue of jurisdiction as to which court will be granted the power to hear Islamic banking cases has been resolved. In this regard, the civil courts have been conferred with the said jurisdiction. By virtue of this fact, the bank and the defaulters are allowed to apply for the civil legal remedies, which have no equivalent features in Shariah Courts.

It is, therefore, proposed that the law and judicial power on halal be vested within federal jurisdiction be it law or judicial. As far as the former is concerned, it can be considered as falling within item (8) of List (1- 9th) Schedule, i.e. trade, commerce and industry. So, the judicial power will also fall under the jurisdiction of civil courts, which can impose a severe penalty compared to Shariah courts (Ibtisam, 2012).

There has been the establishment of a special division under the civil court to deal with Islamic

banking and financial matters, which began operation in February 2009 as a *Muamalat* Court in the Commercial Division of the Kuala Lumpur High Court, where related cases are referred to the Shariah Advisory Council pursuant to Central Bank of Malaysia Act 2009. Accordingly, this set up has promoted Malaysia as the first country having a structured court system to determine both commercial and legal issues in the area of Islamic finance (Rusni& Mohammed, 2011).

### 3.3 Judicial System Experience

The importance of judicial attempts to resolve Islamic financial disputes should not be underestimated. It should be noted that these attempts have not yet resulted in a smallpox solution to regulate the settlement of these disputes, and since Islamic financial matters are complex issues, the civil courts face great challenges in meeting the requirements of civil law and Shariah principles. In Malaysia, Islamic banking and finance matters come under the jurisdiction of the civil courts as provided in List 1, the Federal List (Ninth schedule) of the Federal Constitution, which includes within its scope the mercantile law (banking and finance). This has led some courts to apply common law principles applicable to conventional banking and make no reference to the applicable underlying Shariah principles besides flawed judicial interpretations and applications of Islamic jurisprudence and principles by the judges leading to anomalies and conflicts between Shariah principles and the law. This in turn has caused the uncertainty and debates among stakeholders and the consumer public, and erosion of confidence in the sector.

The main issues that should be highlighted here are the non-existence of substantive Islamic law and lack of expertise in Islamic banking law among judges and counsels. Furthermore, the civil courts are also reluctant to refer to the Shariah Advisory Council (SAC) when dealing with Shariah matters arising from Islamic banking and financial contracts, resulting in the unguided decisions which sometimes are contrary to the Shariah principles. There is a possibility that the court will not seek advice from the SAC, but the judges will decide the Islamic financial cases without the SAC's advice, (Ai Kawamura, 2017), on which Kilian from Harvard Law School posits that Islamic finance should not be viewed in the context of "Islamization of the law," but as part of a revival of Islamic religious ethics in international business" where Sharia principles of Islamic finance are applied as ethical principles and not as legal

principles. Kilian also contends that Islamic finance does not mean to apply Islamic law, but it only employs Islamic law exclusively to ascertain the permissibility of a certain transaction to evaluate it "halal or permissible" or "haram or prohibited" (Maita, 2014). These must be understood in order to get international Islamic legal system practitioners, and to better serve their clients. The major difficulty with grasping Islamic law is that it varies significantly from one place to another, and it is usually argued that there is not only one Islamic law but various laws tracking different school of thoughts, which differ from one another (Erin, 2015).

This is reflected very clearly in the case of *Shamil Bank of Bahrain v. Beximco Pharmaceuticals*. The Shamil Islamic Murabaha agreements contained the following governing law clause, subject to the principles of the Glorious Shariah. This agreement shall be governed by, and construed in accordance with the laws of England. In this case, both the High Court and the Court of Appeals dismissed the defendant's arguments, reasoning that the agreements were invalid and unenforceable due to Shariah non-compliance. While the courts agreed with the defendant on the Shariah non-compliance of the agreement, the court held that the principles of Shariah could not be applied to the agreements. The approach followed, in this case, established English courts' precedent on Islamic finance governing law, and it was upheld in subsequent cases, including most recently the decision of the London High Court in *Dar v. Blom 40*, which was rendered in 2009 concerning a different type of Islamic finance agreement. As a result of these rulings and others in cases that were heard in Western courts, most banks in the industry removed the Shariah reference from their agreement clause and may now include a "waiver of Shariah defenses, meaning that in case of a dispute the parties agree to waive any argument that the agreement is invalid under Shariah Law" (<https://www.out-law.com>).

### 3.4 Alternative to the Judiciary

Dr Engku Rabiah (from International Islamic University Malaysia) has proposed adoption of American Depositary Receipt (ADR) to over the parties appoint persons with at least basic knowledge and understanding of the guiding laws and principles to settle their disputes. The adoption is not a substitute for having competent judges of Islamic law who are powered by the appropriate authority to adjudicate on the disputes is long overdue. It is rather a viable alternative for a better administration of justice

(Maita, 2014). This result has met the study hypotheses and supported it to post the Centre arbitration that proposed to realize the nature of the Halal products and disputes.

## 4 AN APPROACH BETWEEN THE FEATURE OF AIAC AND HALAL PRODUCTS' DISPUTES TRAIT

AIAC is an acronym for Asian International Arbitration Centre, which is the new name for the previous Kuala Lumpur Regional Centre for Arbitration (KLRCA). It is a dispute resolution body established under the Asia-African consultative organization (AALCO) in 1978. It was found to provide aggrieved parties with an alternative to settle their disputes other than using the court system.

### 4.1 The Appropriate of AIAC for Settling Halal Product Disputes

The surge in international trade and cross-border transactions has also seen the emergence of Malaysia as a popular regional and global venue for arbitration. The revitalized Kuala Lumpur Regional Centre for Arbitration (KLRCA), with its state of the art facilities, is also playing a major role in spurring the growth of international arbitration in Malaysia. In recent years, the KLRCA has seen a steady rise in its caseload on a yearly basis. Before 2010, the number of cases registered with KLRCA was between 10 and 20 cases per year. In 2012, KLRCA registered 85 new cases; by 2013 annual cases filed had risen to 156, and by the third quarter of 2014, the centre had already received 226 cases. According to KLRCA's statistics, almost 20% of the arbitration cases in 2013 were international, a marked increase from previous years.

The surge in popularity is largely attributed to a modernized arbitration legal framework and a supportive judiciary. Some of the notable developments are the principal advantages of arbitration, procedural flexibility in arbitral proceedings and the autonomy in nominating arbitrators from a pool of experienced domestic and international arbitrators from diverse fields of expertise, and the confidentiality in proceedings. Another thing is that Malaysia is a signatory to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention). Hence, arbitral awards rendered in Malaysia are enforceable in 148 countries that are

also signatories to this convention, and there is finality in arbitral awards with the judiciary adopting a largely non-interventionist approach. Also, there is the (i-Arbitration) Rules in multiple languages (Arabic, Bahasa Indonesia, Bahasa Malaysia, Spanish, Korean, Chinese (Jasri, 2011).

## 4.2 Special Features of AIAC

Without going into the advantages of arbitration in general which is represented by AIAC, we will point out that this Centre has three sets of arbitration rules: The Rules for Arbitration of the KLRCA 2017; the Fast Track Arbitration Rules 2010, and the KLRCA i-Arbitration Rules 2013. It has also signed up to the United Nations Commission on International Trade Law's Arbitration Rules 2010 and the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) (Rabindra, 2010) and (<https://www.out-law.com>). The Centre has created a new rule compiled between arbitration laws and Islamic law principles, which is called (i-Arbitration) Rules, which allow arbitrations parties to use Sharia law to resolve their international commercial arbitration disputes (Rule 8, July 2012 rules). This rule has made several major changes which the Centre believes will benefit Islamic parties. It allows for parties, who have agreed to arbitrate under Islamic law, to use a Sharia expert or advisory council to make determinations on Islamic law issues (Panighetti, 2013). I-Arbitration has gained a lot of attention across the world as there are not many models for rules to deal with Islamic financial disputes in the ADR (Ai Kawamura, 2017).

According to the document, as a Shariah-compliant form of the UNCITRAL Rules, the new (i-Arbitration) Rules are "comprehensive, time-tested and internationally accepted with the advent of globalization and increasing cross-border transactions. The centre has decided to come up with a set of rules that provide for international commercial arbitration that is suitable for commercial transactions premised on Islamic principles, and that would be recognized and enforceable internationally.

## 5 CONCLUSIONS

In light of the weakness of the legal framework of halal products and the limited judicial role in resolving such disputes in terms of the mechanisms to consider the technical cases disputes, the study concludes that AIAC is reasonably suitable for settling halal product disputes in terms of regulations

that combine Islamic and commercial aspects. The most important aspects of halal products, and its presence, as well as its long experience in arbitrating disputes of Islamic nature such as Islamic finance and Islamic banking, are the most vital areas of halal industry.

For AIAC to contribute effectively, and develop halal sector by settling its disputes, the researcher recommends creation of special regulations, combining all related aspects such as a technical, scientific, Islamic and commercial aspects, and setting up of an independent group of specialists, who combine different sciences related to halal products.

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